IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13-4-2006

Coram:

The Honourable Mr. Justice T.V.MASILAMANI

S.A. No.2031 of 2000

The Divisional Personnel Officer,
Southern Railways,
Tiruchirappalli. .. Appellant

vs.

1. Muthammal
2. Anjambu
3. Rajeswari
4. Danokotiammal .. Respondents

Second Appeal against the judgment and decree dated 29.6.2000 made in A.S. No.143 of 1998 on the file of the Additional District Judge, Villupuram confirming the judgment and decree dated 27.2.1998 in O.S.No.220 of 1993 on the file of the District Munsif, Villupuram.

For Appellant : Mr.V.G.Sureshkumar

For Respondents : Mr.S.Jagannathan
1 to 3

JUDGMENT

The appellant is the first defendant in the suit. The plaintiffs 2 to 4 and the second defendant are the respondents herein.

2. The facts leading to the filing of this appeal are set out briefly as under:-

The deceased first plaintiff originally filed the suit for recovery of family pension as a heir of her deceased son Chakkaravarthy who died while he was in service as fireman in Southern Railway, Villupuram branch. The appellant/first defendant is the Divisional Personnel Officer, Southern Railway, Tiruchirappalli who contested the suit on the ground that the first plaintiff is not entitled to receive the family pension as prayed for. Since the first plaintiff died pending suit, the plaintiffs 2

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to 4 were impleaded as her legal representatives. The wife of the deceased employee, who was impleaded as the second defendant in the suit, remained absent and was set exparte. Learned District Munsif having analysed the evidence and upon hearing both sides, decreed the suit as prayed for, but directed the parties to bear their respective costs. The appellant herein/first defendant preferred the appeal before the Additional District Judge, Villupuram in A.S.No.143 of 1998 wherein the appeal was dismissed confirming the judgment and decree passed by the trial court. Hence, this Second Appeal.

3. Heard Mr.V.G.Sureshkumar, learned counsel appearing for the appellant and Mr.S.Jagannathan, learned counsel appearing for the respondents 1 to 3.

4. Learned counsel for the appellant/first defendant has submitted the following contentions:-

(a) The courts below without considering the statutory effect of the Railway Services (Pension) Rules 1993 held erroneously that the respondents are entitled to the family pension on account of the death of the said Chakkaravarthy who died in harness while working as fireman at Villupuram loco shed on 27.9.1986. As per Rule 75 of the said Rules, the family pension is only payable to the wife of the deceased employee and to the children and none else is entitled to claim the same. In view of rule 75, sub-rules 7, 8 and 19(b) of the said Rule, the mother, namely, Jegadambal who instituted the suit as well as the petition O.P.No.14 of 1990 referred to above is not entitled to receive the family pension and therefore the plaintiffs 2 to 4 who were added as legal representatives of the deceased first plaintiff are not entitled to the suit claim.

(b) The order obtained by the first plaintiff in S.O.P.No.14 of 1990 is with reference to personal right and therefore the plaintiffs 2 to 4 as daughters cannot claim any right on the basis of the said order for the simple reason that the first plaintiff died pending suit on 16.12.1993. Hence, both the courts below failed to appreciate the above contention raised by the first defendant in the suit. Further the second defendant widow was employed by the first defendant on compassionate grounds recognising her as the legally wedded wife of the deceased employee and therefore the courts below erred in decreeing the suit as prayed for.

5. In the above circumstances, the following substantial questions of law were formulated for consideration:-

(1) Whether P.Jagadambal the mother of the deceased railway employee and consequently the respondents 1 to 3

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as her legal heirs are entitled to family pension in respect of the deceased railway employee when they are not entitled to claim family pension in view of Rule 75, sub rule 7, 8 and 19(b) of the Railway Services (Pension) Rules, 1993?

(2) Whether the courts below erred in holding that the finding given in S.O.P.No.14 of 1990 would operate as res judicata in the present proceedings, especially when the effect of the statutory bar under the Pension Rules, though raised in the said proceeding S.O.P.No.14 of 1990 had not been considered by the court below and a finding given?

(3) Whether the order made in succession O.P.No.14 of 1990 on the file of the District Munsif, Villupuram in favour of P.Jagadambal is a personal right which is not heritable unless further orders are obtained?

6. In view of the admitted facts of the case, as narrated above, the main question for consideration in this appeal is whether the respondents 1 to 3 as legal representatives of the deceased mother of the railway employee are entitled to claim family pension in view of Rule 75 sub-rules 7, 8 and 19(b) of Railway Services (Pension) Rules, 1993 which read as follows:-

"75. Family Pension Scheme for railway servants, 1964:--

.. .. ..

(7)(i)(a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(b) On the death of a widow, her share of the family pension, shall become payable to her eligible child:

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal share, or if there is only one such other widow, in full, to her.

(ii) Where the deceased railway servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the railway servant or pensioner:

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Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows or the other child or children otherwise eligible in equal shares, or if there is only one widow or child, in full, to such widow or child.

(iii) where the deceased railway servant or pensioner is survived by a widow but has left behind child or children from a divorced wife or wives, such child or children of they satisfy other conditions of eligibility for payment of family pension shall be entitled to the share of family pension which the mother would have received at the time of the death of the railway servant or pensioner had she not been so divorced:

Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and or to other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.

(8)(i) Except as provided in clause (d) of sub-rule (6) and clause (i) of sub-rule (7), the family pension shall not be payable to more than one member of the family at the same time.

(ii) If a deceased railway servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child.

.. .. ..

(19)(b) For the purpose of this rule, "family", in relation to railway servant, means--

(i) wife in the case of a male railway servant or husband in the case of a female railway servant;

(ii) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery;

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(iii) son who has not attained the age of twenty-five years and unmarried daughter who has not attained the age of twenty five years, including such son and daughter born after retirement or adopted legally before retirement but shall not include a son or daughter adopted after retirement;"

7. In view of the said provisions which have got statutory force, learned counsel for the appellant has straight away drawn the attention of this Court to the decision of the Supreme Court, VIOLET ISSAAC v. UNION OF INDIA (1991 (1) S.C.C. 725) in support of his contention that only the widow and minor unmarried children of the deceased employee are entitled to family pension under the Rules and that none else is entitled to claim family pension either on the basis of a bequest or under any other document obtained on that behalf. The ratio laid down in paragraph (4) in the said decision may be set out hereunder to appreciate the evidence of this case.

"The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition."

8. On a careful reading of the rules referred supra in the light of the principle of law enunciated in the said decision rendered by the Apex Court, it is abundantly clear that in this case also, the plaintiff cannot claim any right to receive family pension on the basis of the succession certificate issued by the District Munisf, Villupuram in S.O.P.No.14 of 1990 as the family pension is payable only to the widow, namely, the 4th respondent herein/second defendant in the suit, who remained exparte in the said proceedings for the issuance of the succession certificate.

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Moreover, the deceased employee had no right or control over the family pension as he did not make any contribution to it and therefore the same could not be considered as part of his estate to be succeeded on the basis of the succession certificate issued by the court. In any view of the matter, it cannot be said that the deceased first plaintiff is a family member to receive family pension (vide) Rule 75(19)(b) of the Railway Services (Pension) Rules 1993. It follows that the respondents 1 to 3 herein/plaintiffs 2 to 4 as legal representative of the deceased first plaintiff cannot also lay any claim for the same.

9. Though the learned counsel for the respondents 1 to 3 has placed strong reliance on the decision rendered by the supreme Court in SARBATI DEVI v. USHA DEVI (AIR 1984 S.C. 346) in support of his contention that the nominee shown in the service records of the deceased employee is not the only person authorised to receive the terminal benefits and that therefore the first plaintiff as mother and legal heir of the deceased employee is also entitled to claim family pension. On facts, it appears that the question in respect of the nomination made in the life insurance policy came up for consideration before the Supreme Court and in that context, it was held that as per the provision under Section 39 of the Insurance Act (Act 4 of 1938), the nominee does not get absolute right to the amount due under the policy.

10. But on the contrary, the facts of this case are entirely different and therefore the Rules referred to above which have certainly got statutory force are mandatory in nature and therefore the appellant being the employer cannot disburse family pension apart from such mandatory provisions under the said Rules. Hence it follows that the succession certificate obtained by the deceased first plaintiff cannot at any stretch of imagination prevail over the statutory Rules of the Railway Services referred to above.

11. Though the learned District Judge in the judgment rendered by him in the first appeal held that the order passed by the court below in S.O.P.No.14 of 1990 operates as res judicata, such finding does not appear to be based on any principle of law or precedent of authority. In this context, learned counsel for the appellant has drawn the attention of this court to the decision V.K.KAMALAM v. PANCHALI AMMA (AIR 1988 KERALA 265) wherein it was held that the proceedings for grant of succession certificates which are summary nature cannot operate as res judicata in the subsequent litigation. Therefore, this Court is of the view that such finding rendered by the first appellant court is also liable to be set aside.

12. For the reasons stated above, this Court is of the considered view that both the courts below have not appreciated the question of law in the context of the facts and circumstance of the

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case in the light of the evidence in a proper perspective so as to arrive at the correct conclusion. Therefore I am of the opinion that the judgments and decrees passed by the courts below are liable to be set aside.

13. Thus the Second Appeal is allowed setting aside the judgments and decrees passed by the courts below and the suit shall stand dismissed, but without costs. However, the parties herein are directed to bear their respective costs.

dpp

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional District Judge, Villupuram.
2. The District Munsif, Villupuram.
3. The Section Officer, V.R.Section, High Court, Madras.

GV (CO)
RSM/2.5.2006

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